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C I R C U L A R .

HEAD QRS. ARMY NORTHERN VA.

August 14, 1863.

The following Instructions are issued for the guidance of Courts Martial and Judges Advocate in this army :

I: MODE OF RECORDING PROCEEDINGS, VIZ:

Proceedings of a General Court Martial, convened at _____, by virtue of the following Special Order :

[Here insert a copy of the order appointing the Court, and if any changes have been made in the detail by subsequent orders, copies of these also.]

Camp of _____, at _____,
July 27, 1863.

The Court met pursuant to the above order.

PRESENT:

1. Col G D R,	1st Virginia Regiment
2. Lt. Col. A B C,	2d Virginia Regiment.
3. Maj. &c.,	&c. &c.
4. &c. &c.,	&c. &c.
Captain H E M,	4th Texas Regiment, Judge Advocate.

ABSENT:

Captain X Y Z,	6th Texas Regiment.
Captain S B,	Assistant A. General P. A. C. S.

[The christian name, surname, with rank, regiment, &c., of each member and of the Judge Advocate, to be given.]

The Judge Advocate read a communication from Captain Z, stating the cause of his absence, and enclosing surgeon's certificate of indisposition. The letter, with certificate, is appended hereto, and marked A.

The cause of Captain B's absence is not known.

The Court then proceeded to the trial of Lieutenant X Y, 3rd Virginia Regiment, who was called before the Court, and having heard the order appointing the same read, was asked if he had any objection to any member named therein.

[A challenge not made now, cannot be made at a later stage of the proceedings, except for cause now unknown to the accused.]

To which he replied in the negative
[Or] The accused objected to Captain [] and stated his cause of challenge as follows, viz: *Enlisted in the 3d Va. Regt. at Richmond, Va. 1st day of Jan - 1862*

[Here insert statement of the accused.]

Captain [] remarked that &c.

The Court was cleared, the challenged member retiring, and after due deliberation, the doors were opened; and the accused and challenged party being recalled, the decision of the Court was announced by the Judge Advocate, viz: that the challenge is sustained as sufficient, and that Captain [] is excused from serving as a member of the Court pending the trial of this case.

The accused having no objections to any of the other members, the Court was then, in his presence, duly sworn by the Judge Advocate, and the Judge Advocate was duly sworn by the President of the Court.

[At this stage of the proceedings, the accused, if desiring it, should apply for the privilege of introducing counsel, or for the postponement of his case, giving his reasons for such postponement.] *2nd day - Jan*

The Judge Advocate then admonished the accused of the gravity of the offense with which he stands charged, viz: Drunkenness on duty, the penalty for which is cashiering. *Counsel*

[Or] Desertion, the penalty for which is death or confinement in a penitentiary, with or without hard labor, for not less than one year nor more than five, or such punishment, not inconsistent with the above, as the Court may determine; and asked him if he desired counsel, or the postponement of the case for any reason. *Counsel*

The accused declared himself ready for trial, and applied to the Court to be permitted to introduce M N, Esq. as his counsel; which application, the Court being cleared for deliberation, was granted, and the accused, together with his said counsel, reappeared in Court.

The accused, Lieutenant X Y of the 3d Va. Regiment, was then arraigned on the following Charge and Specification; which were read aloud by the Judge Advocate, to wit:

CHARGE—Drunkenness on duty.

Specification—In this, that he Lieutenant X Y of the 3d Va. Regiment was found drunk whilst on duty at regimental dress parade. All this at or near on or about the [] day of [] in the year of our Lord one thousand eight hundred and sixty-

[The Charge and Specification should be copied in the proceedings, all abbreviations in the original being written out in words.]

The Judge Advocate addressed the accused, Lieutenant X Y: You have heard the Charge and Specification preferred against you. How say you—Guilty or Not Guilty? *Not Guilty*

~~Fr~~
~~C 744~~

Not Guilty.
Not Guilty.

11
Curtis
Curtis
Curtis

Examined by the Court:

Question.—

Answer.—&c.

The examination of Lieutenant R S being concluded, he was directed to withdraw.

The defence here closed.

The Judge Advocate having no testimony in reply to offer, the accused requested until to prepare his final defence. The Court, being cleared for deliberation, granted the request, and having recalled the accused and notified him thereof, adjourned, to meet again in this case on the day of 1863, at o'clock.

H E M, Capt. 4th Texas Reg't,
Judge Advocate.

Camp of , at
July 28, 1863.

The Court met pursuant to adjournment.

PRESENT:

1. Col. G D R,
2. Lieut. Col. A B C,
3. Maj. &c.
4. &c. &c.
7. Capt. S B,
- Capt. H E M,

1st Virginia Regiment.
2d Virginia Regiment.
&c. &c.
&c. &c.
Asst. Adj. Gen. P. A. C. S.
4th Texas Regiment, Judge Advocate.

Captain S B stated that he was absent on the 27th day of July 1863, in consequence of

Lieutenant X Y of the 3d Virginia Regiment, the accused, together with M N, Esq., his counsel, being called, then appeared in Court; and Captain S B, not being present at the previous proceedings in this case, withdrew as a member.

The proceedings of yesterday were read by the Judge Advocate.

The accused then presented the written address hereunto appended, and marked B; which was read by his counsel [*or as the case may be, by the Judge Advocate, or which he read*] in his defence.

The Judge Advocate submitted the case without remark.

[Should the Judge Advocate desire time to prepare a reply, he should now ask for it.]

The case being thus concluded on the part of the prosecution and of the defence, the Court was then cleared for deliberation, and having maturely considered the evidence adduced [*in cases where the accused has pleaded "Guilty," substitute for the "evidence adduced," the words "pleas of the accused"*], finds the accused, Lieutenant X Y, of the third Virginia Regiment, as follows, to wit:

Of Specification,
Of Charge,

Guilty.
Guilty

And the Court do therefore sentence him Lieutenant X Y, of the third Virginia Regiment, to be cashiered.

G D R, Col. 1st Va. Reg't,
Pres't Gen'l Court Martial.

H E M, Capt. 4th Texas Reg't,
Judge Advocate.

The hour of adjournment, viz: o'clock P. M. having arrived, the Court then adjourned, to meet to-morrow, the day of , at 8 o'clock A. M.

G D R, Col. 1st Va. Reg't,
Pres't G. C. M.

H E M, Capt. 4th Texas Reg't,
Judge Advocate.

[Or] There being no further business before the Court, it then adjourned, to meet on the call of the President.

G D R, Col. 1st Va. Reg't,
Pres't G. C. M.

H E M, Capt. 4th Texas Reg't,
Judge Advocate.

Form of Sentence of Death.

And the Court, two-thirds concurring, do therefore sentence him to be shot to death with musketry [*or to be hanged by the neck until dead*], at such time and place as the General Commanding may direct.

In cases where the death penalty is absolutely fixed, the words "do, two-thirds concurring, find, &c." must be used in the finding.

II. GENERAL REMARKS.

1. In all cases, but especially where the accused is a private, and the penalty affixed to his offence is death, the Judge Advocate will be careful to warn him of the gravity of his offence, and to afford him every facility for his defence, furnishing him with a copy of the Charges previously to his trial, summoning his witnesses, and affording him, if desiring it, the opportunity to procure counsel.

While the guilty should not escape nor the administration of justice be brought into contempt by the infliction of frivolous punishments for grave offences, conviction should leave no reasonable doubt of guilt.

2. A Court Martial being called to order, no member can leave his seat without the permission of the President, and if only momentarily absent, the proceedings must be suspended until his return. But if absent from a part of the proceedings, he cannot resume his seat, without rendering them null and void.

3. The time and place for the session of a Court Martial can be changed only by the authority convening it; and Charges ordered for trial can be withdrawn only by the authority so ordering them.

4. But one member of a Court can be challenged at a time. The objection of the accused, the statement of the challenged member, and the declarations of the witnesses on the point, are made without oath, the Court, previously to its being sworn, having no right to administer an oath.

The Judge Advocate cannot be challenged.

5. While the accused is allowed counsel to assist him in conducting his defence, such assistance is confined strictly to giving advice, framing questions to be put either by the accused or through the Judge Advocate. He has no right to propound questions nor to address the Court. He may, by permission, read the prisoner's written defence.

6. It is the duty of the Judge Advocate to see that the Charge and Specifications are correct, before the accused is called upon to plead to them. They may be amended before plea, and after plea in case the plea is in abatement for a misnomer or wrong addition. In this latter case, they should be amended according to what prisoner declares to be his true name and addition; and the trial will proceed as if no such dilatory plea had been interposed. The Charge should be single—e. g. a Charge: "Desertion and cowardice" is improper. Each offence should constitute a separate and distinct Charge.

The Specification should set forth briefly, clearly and explicitly the facts, circumstances and intent which constitute the crime, stating nothing argumentatively, and adopting, as nearly as possible, the language of the Article of War referring to the offence charged. The Specification should, like the Charge, be single—e. g. a Specification averring one to be a habitual coward, is bad. The facts which show cowardice on each particular occasion should be set forth in separate and distinct Specifications. Written instruments, forming the gist of the offence charged, must be set out verbatim, "in words and figures as follows, viz." If a part only of the written instrument is included in the offence, that part need only be set forth.

The party committing the offence, and the party against whom it is committed, as in the 9th Article of War, &c., must be described by their christian name and surname and proper addition, viz: rank, company, regiment, or other designation. Should the party injured, however, be unknown, the proper description is, "a person or persons unknown." The Specification should further be certain as to time and place; though the time may be stated as "on or about a certain day," and the place as "at or near a certain locality."

7. The accused must plead to each Charge and Specification separately; and if he pleads Not Guilty to a part of either, the Court should take testimony thereon before making the finding.

The plea of Guilty to the Charge and Specification renders unnecessary any evidence in chief, but does not preclude the accused from offering testimony as to facts and character, which may mitigate the sentence, or from making a written defence.

In such case, however, the Judge Advocate is entitled to offer rebutting testimony, and to the reply.

The plea of Not Guilty of the Charge and Specification, puts in issue every fact alleged, and they must consequently be proved: nor should it be left to inference, but distinctly proved, that the prisoner at the bar is the accused; and furthermore, that he is a soldier, retainer to the camp, or other person subject to the jurisdiction of a Court Martial. Courts of limited jurisdiction, as Courts Martial are, must show upon the record the facts giving them jurisdiction.

To support the plea of a former acquittal or former conviction, it is necessary the accused should have been acquitted or convicted on a former trial, by a legal Court of competent jurisdiction; and the record of this fact must be produced to the Court. An illegal Court being no Court, its verdict is no bar to future proceedings.

No special form is required for pleas before Courts Martial.

8. In evidence, the ordinary rules of civil courts apply; and questions by the Judge Advocate, prisoner or a member of the Court, are subject to the usual objections. But a question by the Court cannot be objected to. A question of a member, adopted by the Court, becomes a question by the Court.

The testimony of witnesses should be recorded in their very words, and not merely the substance given: nor is it sufficient to record that "nothing material was elicited." All the testimony should be recorded, and once recorded, cannot be erased.

If there is any doubt of the meaning of the witness, he must explain it in his own language.

When his testimony is complete, it should be read over to him, but not previously—otherwise this might defeat the object of the cross-examination.

As a general rule, the Charges and Specifications should not be read to the witness before he gives his evidence. If he drew the Charges, or was privy thereto, he may refresh his memory as to the incidental circumstances of date, &c.; but whenever the Charge and Specification would recall particular words and expressions, &c. &c., the reading, operating really as a leading question, is manifestly improper, and must be avoided.

The accused is always allowed, whether by the cross-examination of the witnesses for the prosecution, or by those for the defence, to prove character; and though general character, unconnected with the Charge, should not influence the finding, it often modifies the sentence.

At any stage of the proceedings previous to the finding, the Court may recall witnesses—the parties being also recalled.

A member of the Court and the Judge Advocate are competent witnesses; but the member who is to testify had better withdraw, provided the number present be not reduced below the minimum (five).

The Judge Advocate, if a witness, is sworn by the President of the Court, and should give his testimony, as early as practicable, before hearing the other witnesses.

9. If the accused is found not guilty of the entire Specification, he must be acquitted also of the Charge. But a special verdict can always be found of facts less (never, however, more) comprehensive than those alleged—e. g. under a Specification averring absence, without leave, from the 1st January 1863 to 1st July 1863. Such absence may be found from the 1st February 1863 to the 1st June 1863, &c., but never for a term extending beyond the limits of that averred.

A prisoner found Guilty of the Specification and Not Guilty of the Charge, is virtually acquitted; for this is equivalent to finding that the facts, though true, involve no criminality. But a prisoner may be found guilty of a crime of less

degree than that charged, though never of one of a higher degree, or of one different in kind—e. g. under a charge of desertion can be found absent without leave, but never desertion under a charge of absence without leave; nor under a charge of theft, can absence without leave be found, otherwise the prisoner might be convicted of a crime of which he has had no notice, and against which, consequently, he has had no opportunity of defending himself.

10. Army Regulations, § 873. "The legal punishment for soldiers by sentence of a Court Martial, according to the offence and jurisdiction of the Court, are: death, corporal punishment by flogging, confinement, confinement on bread and water diet, solitary confinement, hard labor, ball and chain, forfeiture of pay and allowances, discharges from service, and reprimands. Solitary confinement, or confinement on bread and water, shall not exceed fourteen days at a time, with the intervals between the periods of such confinement not less than such periods, and not exceeding eighty-four days in one year."

The punishment by flogging is abolished.

Act of Congress, approved 13th April 1863. All officers and soldiers convicted of desertion "shall suffer death, or confinement in a penitentiary, with or without hard labor, for a period not less than one year or more than five, or such other punishment, not inconsistent with the provisions of this act, as the Court Martial or Military Court may determine."

Army Regulations, § 874. "A Court Martial cannot assign and make over the pay of a soldier to any other person." * * * *

Guard duty, one of the most honorable and responsible a soldier can perform, should not be degraded into a punishment.

In accordance with the usages and the regulations of the service, non-commissioned officers should be reduced to the ranks whenever sentenced to confinement, hard labor, or ball and chain.

The punishments applicable to officers are: death, cashiering or dismissal, suspension from rank and pay, confinement, or reprimand, either public or private.

Article of War, No. 85. "In all cases where a commissioned officer is cashiered for cowardice or fraud, it shall be added in the sentence, that the crime, name and place of abode and punishment of the delinquent be published in the newspapers in and about camp, and of the particular State from which the offender comes."

The sentence of death can be passed only in such cases where it is expressly authorized by the Articles of War; and in such cases it is necessary that two-thirds of the members of the Court concur in the sentence, and that the record should show such concurrence. But, except in cases under the 55th Article of War, and under § 2 of the act establishing the Articles of War, where the penalty of death is absolutely fixed, and no discretion allowed to the Court, it is not required that two-thirds should also concur in the finding. In the cases mentioned, it is necessary that the record should show such concurrence in the finding.

It being prohibited to disclose the vote or opinion of any member of the Court, it is improper to spread the votes on the record, or to state that the finding or sentence was unanimous.

A spy, and one guilty of mutiny accompanied with loss of life, are generally hanged. Deserters, &c. are generally shot. The mode, however, of executing a death sentence (whether by shooting or hanging) may in all cases be declared in the sentence.

Under the Regulations, the pay and allowances of officers and soldiers absent without authority, are forfeited; and the pay forfeited by the sentence of a Court, is that which subsequently accrues.

The imposition of illegal punishments, e. g. bucking, gagging, &c., is equivalent to inflicting none, as they must be remitted.

The sentence should be precise, clear, explicit and certain, without any abbreviations, and with nothing left to inference.

"The forfeiture of so much pay as will cover the expenses of apprehension and return to the regiment," is void for uncertainty. The Court should ascertain by testimony, and fix the amount forfeited.

11. A Court Martial deliberates always with closed doors, and the record must show that it was cleared for deliberation.

12. At any time previous to the final adjournment, the case being still in its possession, a Court Martial can modify or altogether change the sentence already passed by it.

13. When a cause is remanded for revision, no additional testimony can be heard, and no member absent from the original trial can now take his seat. As far as practicable, *all* the members present at the trial should be present at the revision.

14. No Court Martial will adjourn without day, except by order from these Head Quarters. Having concluded its business, or being reduced below the minimum (five members), it will adjourn to meet upon the call of the President or Judge Advocate, and report the fact to these Head Quarters, the members returning to their commands.

Being a member of a Court gives an officer no right to leave his command. If the Court adjourn in consequence of a march, he will resume his duties with his command.

"When a Court adjourns for three days, the Judge Advocate shall report the fact to the Commander of the post or troops, and the members belonging to the command will be liable to duty during the time." Army Regulations, § 881.

Members of Courts Martial are not excused from their duties as such, until relieved by the authority appointing the Court. Details for Courts Martial have precedence over all other duties, except those on the battle field; for which temporary adjournments will be made. No member can be excused from the duties of the Court by other details, unless regularly relieved by the authority ordering the Court. In all instances where members are absent from sittings of the Court, names of absentees will be reported in the proceedings, with cause of absence. General Orders, No. 10, Head Quarters Army Northern Virginia, current

members should be tried separately, unless their offence is in its nature referred to have been jointly committed.

16. The proceedings in each case will be made up separately, and endorsed as follows (say):

"General Court Martial Proceedings, Camp of Anderson's Division, Special Orders, No. 128, Head Quarters Army Northern Virginia. Private M N, Co. A, 1st Va. Regiment."

Cases will be sent in weekly.

Sufficient space will be left on the page containing the sentence, for the order approving or disapproving of the proceedings, viz: either to be written at the foot of such page, or endorsed on it.

The signatures of the President and the Judge Advocate will be immediately at the foot of the sentence.

The special attention of the Judge Advocate and of the members of the Courts is directed to Art. XXXVIII of the Army Regulations, and to the Articles of War.

By command of General R. E. LEE.

H. E. YOUNG,

J. A. General.

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